

TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER ii: INSURANCE PRODUCERS, LIMITED INSURANCE
REPRESENTATIVES AND REGISTERED FIRMS

PART 3120
SUITABILITY IN ANNUITY TRANSACTIONS

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AUTHORITY: Implementing and authorized by Article XXXI of the Illinois Insurance Code [215 ILCS 5] and further authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5].

SOURCE: Adopted at 31 Ill. Reg. 12747, effective January 1, 2008; amended at 35 Ill. Reg. 16087, effective September 26, 2011; amended at 46 Ill. Reg. _____, effective _____.

Section 3120.10 Purpose

- a) The purpose of this Part is to require insurance producers to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations~~set forth standards and procedures for recommendations by insurers or insurance producers to consumers that result in a transaction involving annuity products~~ so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively~~appropriately~~ addressed.
- b) Nothing in this Part shall be construed to create or imply a private cause of action for a violation of this Part or to subject an insurance producer to civil liability

under the best interest standard of care outlined in Section 3120.50 of this Part or under standards governing the conduct of a fiduciary or a fiduciary relationship.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.20 Scope

This Part shall apply to any sale or recommendation ~~of to purchase, exchange or replace~~ an annuity ~~made to a consumer by an insurance producer, or an insurer when no producer is involved, that results in the purchase, exchange or replacement recommended.~~

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.30 Exemptions

Unless otherwise specifically included, this Part shall not apply to transactions ~~recommendations~~ involving:

- a) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Part;
- b) Contracts used to fund:
 - 1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - 2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC) (26 USCS 401 et seq.), as amended, if established or maintained by an employer;
 - 3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC; or
 - 4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- c5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- d6) Formal prepaid funeral contracts.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.40 Definitions

"Annuity" means an insurance product under ~~Illinois~~^{State} law that is sold by insurance companies in which the insurer provides for either a single income payment or a series of income payments at regular intervals in exchange for a single premium (contribution) or multiple premiums (contributions) paid by the annuitant.~~that is individually solicited, whether the product is classified as an individual or group annuity.~~

"Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an insurance producer directly from the consumer or in connection with the recommendation or sale of an annuity from an insurer or intermediary.

"Code" means the Illinois Insurance Code [215 ILCS 5].

"Consumer Profile Information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

Age;

Annual income;

Financial situation and needs, including debts and other obligations;

Financial experience;

Insurance needs;

Financial objectives;

Intended use of the annuity;

Financial time horizon;

Existing assets or financial products, including investment, annuity, and life insurance holdings;

Liquidity needs;

Liquid net worth;

Risk tolerance, including but not limited to willingness to accept non-guaranteed elements in the annuity;

Financial resources used to fund the annuity; and

Tax status.

"Continuing education credit" or "CE credit" means one continuing education credit as defined in 50 Ill. Adm. Code 3119.

"Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to 50 Ill. Adm. Code 3119.

"Department" means the [Illinois](#) Department of Insurance.

"Director" means the Director of the Illinois Department of Insurance.

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

"General Agency" means an insurance agency that provides supervision on behalf of an insurer's sales force in a particular geographic region.

"Independent Agency" means an insurance agency comprised of independent contractors who sell insurance with one or more insurers.

"Insurance Producer" means a person [or entity](#) required to be licensed under the laws of this State to sell, solicit, or negotiate insurance, including annuities. [For purposes of this Part, "Insurance Producer" includes an insurer where no person or entity is involved.](#)

"Insurer" means an entity required to be licensed under the laws of this State to provide insurance products, including annuities.

"Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by insurance producers.

"Material conflict of interest" means a financial interest of the insurance producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. "Material conflict of interest" does not include cash compensation or non-cash compensation.

"Non-cash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits.

"Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest-based credits, charges, or elements of formulas used to determine any of these elements, that are subject to insurance company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

"Recommendation" means advice provided by an insurance producer, or an insurer when no insurance producer is involved, to an individual consumer that was intended to result or does result in a purchase, exchange, or replacement of an annuity in accordance with that advice. "Recommendation" does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

"Replacement" means ~~any~~ a transaction in which a new ~~annuity will~~ ~~policy or contract is to~~ be purchased, and it is known or should be known to the proposing insurance producer, or to the proposing insurer if there is no insurance producer involved, that ~~because~~ ~~by reason~~ of the transaction an existing ~~annuity or other~~ insurance policy ~~or contract~~ has been or is to be any of the following:

Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

Amended ~~so as~~ to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

Reissued with any reduction in cash value; or

Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25% of the loan value set forth in the policy~~Used in a financed purchase.~~

"Replacing Insurer" means the insurance company that issues a new annuity which is a replacement of an existing policy or contract.

"SEC" means the United States Securities and Exchange Commission.

~~Suitability Information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

~~Age;~~

~~Annual income;~~

~~Financial situation and needs, including the financial resources used for the funding of the annuity;~~

~~Financial experience;~~

~~Financial objectives;~~

~~Intended use of the annuity;~~

~~Financial time horizon;~~

~~Existing assets, including investment and life insurance holdings;~~

~~Liquidity needs;~~

~~Liquid net worth;~~

~~Risk tolerance; and~~

~~Tax status.~~

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.50 Duties of Insurers and Insurance Producers

a) Best Interest Obligations. An insurance producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made without placing the insurance producer's or the insurer's financial interest ahead of the consumer's interest. An insurance producer has acted in the best interest of the consumer if the insurance producer has satisfied the following obligations regarding care, disclosure, conflict of interest, and documentation:

1) Care obligation

A) The insurance producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

i) Know the consumer's financial situation, insurance needs and financial objectives;

ii) Understand the available recommendation options after making a reasonable inquiry into options available to the insurance producer;

iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

iv) Communicate to the consumer the basis or bases of the recommendation.

B) The requirements under subsection (a)(1)(A) include making reasonable efforts to obtain consumer profile information from the consumer before recommending an annuity.

C) The requirements under subsection (a)(1)(A) require an insurance producer to consider the types of products the insurance producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the insurance producer or other possible alternative products or strategies available in the market at the time of the recommendation. Insurance Producers shall be held to standards applicable to insurance producers with similar authority and licensure.

- D) The requirements under this subsection (a) do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this Part.
- E) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in determining whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this subsection (a)(1) may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.
- F) The requirements under subsection (a)(1)(A) include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.
- G) The requirements under subsection (a)(1)(A) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.
- H) The requirements under subsection (a)(1)(A) do not mean the annuity with the lowest one-time or multiple occurrence compensation structure must necessarily be recommended.
- I) The requirements under subsection (a)(1)(A) do not mean the insurance producer has ongoing monitoring obligations under the care obligation under this subsection (a)(1), although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the insurance producer.
- J) In the case of an exchange or replacement of an annuity, the insurance producer shall consider the whole transaction, which includes taking into consideration whether:
- i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits,

or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

iii) The consumer had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

K) Nothing in this Part should be construed to require an insurance producer to obtain any license other than an insurance producer license that authorizes the sale, solicitation or negotiation of insurance in Illinois, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this Part, provided the insurance producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

2) Disclosure Obligation

A) Before recommending or selling an annuity, the insurance producer shall prominently disclose to the consumer on a form substantially similar to the form that appears in Appendix A:

i) A description of the scope and terms of the relationship with the consumer and the role of the insurance producer in the transaction;

ii) An affirmative statement on whether the insurance producer is licensed and authorized to sell the following products:

- Fixed annuities;
- Fixed indexed annuities;
- Variable annuities;
- Life insurance;
- Mutual funds;

- Stocks and bonds; and
- Certificates of deposit
- iii) An affirmative statement describing the insurers for which the insurance producer is authorized, contracted (or appointed), or otherwise able to sell insurance products, using the following descriptions:
 - From one insurer;
 - From two or more insurers; or
 - From two or more insurers although primarily contracted with one insurer.
- iv) A description of the sources and types of cash compensation and non-cash compensation to be received by the insurance producer, including whether the insurance producer is to be compensated for the sale of a recommended annuity by commission as part of a premium or other remuneration received from the insurer, intermediary or other insurance producer or by fee as a result of a contract for advice or consulting services; and
- v) A notice of the consumer's right to request additional information regarding cash compensation described in subsection (a)(2)(B);
- B) Upon request of the consumer or the consumer's designated representative, the insurance producer shall disclose:
 - i) A reasonable estimate of the amount of cash compensation to be received by the insurance producer, which may be stated as a range of amounts or percentages; and
 - ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

C) Before or at the time of the recommendation or sale of an annuity, the insurance producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

3) Conflict of Interest Obligation. An insurance producer shall identify and avoid or reasonably manage and disclose to the consumer material conflicts of interest, including material conflicts of interest related to an ownership interest.

4) Documentation Obligation. An insurance producer shall at the time of recommendation or sale:

A) Make a written record of any recommendation and the basis for the recommendation subject to this Part;

B) Obtain a consumer-signed statement on a form substantially similar to Appendix B documenting:

i) A customer's refusal to provide the consumer profile information, if any;

ii) A customer's understanding of the ramifications of not providing consumer profile information or providing insufficient consumer profile information; and

C) Obtain a consumer-signed statement on a form substantially similar to Appendix C acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's recommendation.

5) Application of Best Interest Obligation. Any requirement applicable to an insurance producer under this subsection (a) shall apply to every insurance producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the insurance producer had

any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back-office product support, and general supervision of an insurance producer do not, in and of themselves, constitute material control or influence.

- a) ~~In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer when no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~
- ~~1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;~~
 - ~~2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;~~
 - ~~3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and~~
 - ~~4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:~~
 - ~~A) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;~~
 - ~~B) The consumer would benefit from product enhancements and improvements; and~~

- ~~C) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.~~

b) Transactions Not Based on a Recommendation

- 1) Except as provided under subsection (b)(2), an insurance producer shall have no obligation to a consumer under subsection (a)(1) related to any annuity transaction if:
- A) No recommendation is made;
- B) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
- C) A consumer refused to provide relevant consumer profile information and the annuity transaction is not recommended; or
- D) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurance producer.
- 2) An insurer's issuance of an annuity subject to subsection (b)(1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

- ~~b) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

c) Supervision System

- 1) Except as permitted under subsection (b), an insurer ~~may~~shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information~~is suitable based on the consumer's suitability information.~~

~~d) Recommendation to Consumers~~

- 1) ~~Except as provided under subsection (d)(2), neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection (a) or (c) related to any annuity transaction if:~~
 - A) ~~No recommendation is made;~~
 - B) ~~A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;~~
 - C) ~~A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or~~
 - D) ~~A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.~~
 - 2) ~~An insurer's issuance of an annuity subject to subsection (d)(1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.~~
- e) ~~An insurance producer or, when no insurance producer is involved, the responsible insurer representative, shall, at the time of sale:~~
- 1) ~~Make a record of any recommendation subject to Section 3120.50(a) of this Part;~~
 - 2) ~~Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~
 - 3) ~~Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~
- f) ~~Supervision of Recommendations~~
- 21) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this Part, including, but not limited to, the following:
 - A) The insurer shall establish and maintain ~~and incorporate~~ reasonable procedures to inform its insurance producers of the requirements of

this Part and shall incorporate the requirements of this Part~~regulation~~ into relevant insurance producer training manuals;

- B) The insurer shall establish and maintain standards for ~~insurance~~ producer product training and shall establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of Section 3120.60~~of this Part~~;
- C) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its insurance producers;
- D) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that~~are~~ ~~designed to~~ ensure ~~that~~ there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives~~a recommendation is suitable~~. The review procedures may apply a screening system to identify~~for the purpose of identifying~~ selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such ~~aan electronic or other~~ system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- E) The insurer shall maintain reasonable procedures to detect recommendations that are not in compliance with subsections (a), (b), (d), and (e)~~suitable~~. This may include, but is not limited to, confirmation of the consumer's profile~~consumer suitability~~ information, systematic customer surveys, insurance producer and consumer interviews, confirmation letters, insurance producer statements or attestations, and programs of internal monitoring. Nothing in this subsection (c)(2)(E)~~subsection (f)(1)(E)~~ prevents an insurer from complying with this subsection~~subsection (f)(1)(E)~~ by applying sampling procedures, or by confirming the consumer profile~~suitability~~ information or other required information under this Section after issuance or delivery of the annuity; ~~and~~
- F) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon the issuance or delivery of an annuity, whether an insurance producer has provided to the consumer the information required to be provided under this Section;

- G) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
- H) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subsection (c)(2)(H) are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and
- I) The insurer shall annually provide a written report to senior management, including the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- 32) Nothing in this subsection (c)(~~f~~) restricts an insurer from contracting for the performance of a function (including maintenance of procedures) required under this subsection (~~f~~)(1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 3120.90 ~~of this Part~~ regardless of whether the insurer contracts for the performance of a function and regardless of the insurer's compliance with subsection (c)(4)(~~f~~)(3).
- 43) An insurer's supervision system under this subsection (c)(~~f~~)(1) shall include supervision of contractual performance under this subsection (c)(4)(~~f~~)(3). This includes, but is not limited to, the following:
- A) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
- B) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- 54) An insurer is not required to include in its system of supervision:

- 684
- 685 A) ~~An~~ insurance producer's recommendations to consumers of
- 686 products other than the annuities offered by the insurer; or
- 687
- 688 B) Consideration of or comparison to options available to the
- 689 insurance producer or compensation relating to those options other
- 690 than annuities or other products offered by the insurer.
- 691
- 692 d) Prohibited Practices. Neither an ~~An~~ insurance producer nor an insurer shall ~~not~~
- 693 dissuade, or attempt to dissuade, a consumer from:
- 694
- 695 1) Truthfully responding to an insurer's request for confirmation of consumer
- 696 profile~~suitability~~ information;
- 697
- 698 2) Filing a complaint with the Department; or
- 699
- 700 3) Cooperating with the investigation of a complaint.
- 701
- 702 e) Safe Harbor
- 703
- 704 1) Recommendations and sales~~Sales~~ made in compliance with comparable
- 705 standards~~FINRA requirements pertaining to suitability and supervision of~~
- 706 ~~annuity transactions~~ shall satisfy the requirements of this Part. This
- 707 subsection applies to all recommendations and sales of annuities made by
- 708 financial professionals in compliance with business rules, controls, and
- 709 procedures that satisfy a comparable standard even if that standard would
- 710 not otherwise apply to the product or recommendation at issue~~FINRA~~
- 711 ~~broker-dealer sales of variable annuities and fixed annuities if the~~
- 712 ~~suitability and supervision is similar to those applied to variable annuity~~
- 713 ~~sales.~~ However, nothing in this subsection limits~~shall limit~~ the Director's
- 714 ability to investigate and enforce ~~(including investigate)~~ the provisions of
- 715 this Part.
- 716
- 717 2) Nothing in subsection (e)(1) shall limit the insurer's obligation to comply
- 718 with Section 3120.50(c)(1), although the insurer may base its analysis on
- 719 information received from either the financial professional or the entity
- 720 supervising the financial professional.
- 721
- 722 3) For subsection (e)(1)~~(h)~~ to apply, an insurer shall:
- 723
- 724 A) Monitor the relevant conduct of the financial professional seeking
- 725 to rely on subsection (e)(1) or the entity responsible for supervising
- 726 the financial professional, such as the financial professional's

broker-dealer or an investment adviser registered under federal or State securities laws using information collected in the normal course of an insurer's business; and

B) Provide to the entity responsible for supervising the financial professional seeking to rely on subsection (e)(1), such as the financial professional's broker-dealer or investment adviser registered under federal or State securities laws, information and reports that are reasonably appropriate to assist that entity in maintaining its supervision system.

~~1) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and~~

~~2) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.~~

4) For purposes of this subsection (e), "financial professional" means an insurance producer that is regulated and acting as:

A) A broker-dealer registered under federal or State securities laws or a registered representative of a broker-dealer;

B) An investment adviser registered under federal or State securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

C) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002(21)) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) (26 U.S.C. 4975(e)(3)) or any amendments or successor statutes.

5) For purposes of this subsection (e), "comparable standards" means:

A) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest (17 CFR 240 (2022; this incorporation does not include any later amendments or editions));

B) With respect to investment advisers under federal or State securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including, but not limited to, the SEC's Form ADV (see <https://www.sec.gov/about/forms/formadv.pdf>); and

C) With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions, and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.60 Insurance Producer Training

a) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

~~b) The training requirements of subsection (c)(4) may be approved as continuing education courses under Section 500-35(b)(1) of the Code.~~

be) Training Requirements

1) An insurance producer who engages in the sale of annuity products shall complete a one-time ~~four-hour~~four-hour credit training course approved by the Department and provided by a Department-approved education provider.

2) Insurance producers who hold a life insurance line of authority after ~~June 30, 2023~~June 30, 2012 and who desire to sell annuities shall complete the requirements of this ~~subsection~~Section by ~~January 1, 2024~~July 1, 2012. Individuals who obtain a life insurance line of authority on or after January 1, 2024 may not engage in the sale of annuities until the annuity training course required under this ~~subsection~~Section has been completed.

3) The minimum length of the training required under this Section shall be sufficient to qualify for at least four CE credits, but may be longer. When an annuity product offers any ~~long-term~~long-term care benefits as defined

in 50 Ill. Adm. Code 2012.30, the insurance producer shall complete the training requirements in 50 Ill. Adm. Code 2012.121 prior to selling the annuity product.

- 4) The training required under this Section shall include information on the following topics:
 - A) The types of annuities and various classifications of annuities;
 - B) Identification of the parties to an annuity;
 - C) How ~~product-specific~~~~fixed, variable and indexed~~ annuity contract ~~features~~~~provisions~~ affect consumers;
 - D) The application of income taxation of qualified and non-qualified annuities;
 - E) The primary uses of annuities; and
 - F) Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.
- 5) Providers of courses intended to comply with this Section shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- 6) A provider of an annuity training course intended to comply with this subsection (b) shall register as a CE provider in this State and comply with the rules applicable to insurance producer continuing education in 50 Ill. Adm. Code 3119.30.
- 7) An insurance producer who completed an annuity training course approved by the Department before July 1, 2023 shall, by January 1, 2024, complete either:
 - A) A new four-credit training course approved by the Department that covers the required topics of (b)(4) in this subsection; or
 - B) An additional one-time one-credit training course approved by the Department and provided by a Department-approved education

provider on appropriate sales practices, replacement, and disclosure requirements under this Part.

- 8) Annuity training courses may be conducted and completed by classroom, webinar, or self-study methods in accordance with 50 Ill. Adm. Code 3119.30.
- 9) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 50 Ill. Adm. Code 3119.30.
- 106) The satisfaction of ~~the~~these training requirements ~~of another~~in any state that are substantially similar to the provisions of this subsection (b)~~Section~~ shall be deemed to satisfy the training requirements of this subsection (b)~~Section~~ in Illinois~~this State~~.
- 11) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection (b) shall be deemed to satisfy the training requirements of this subsection (b) in Illinois.
- 127) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection (b)~~Section~~ before allowing the insurance producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection (b)(12)~~(b)(10)~~ by obtaining certificates of completion of the training course or obtaining reports provided by ~~commissioner-sponsored~~ database systems or vendors sponsored by the insurance commissioners of other states or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.70 Compliance Mitigations; Penalties

- a) An insurer is responsible for compliance with this Part. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the Director may order:
 - 1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this Part by the insurer~~insurer's~~, an entity contracted to perform the insurer's supervisory duties or by the~~its~~ insurance producer~~producer's~~, violation of this Part;

- 2) A general agency, an independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation ~~of this Part~~; and
 - 3) Appropriate penalties and sanctions ~~as, including, but not limited to, those set forth in Section 3120.90 of this Part.~~
- b) Any applicable penalty for a violation of this Part may be reduced or eliminated at the sole discretion of the Director if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.80 Recordkeeping

- a) Insurers, general agents, independent agencies, and insurance producers shall maintain and be able to make available to the Director records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for 7 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- b) Records required to be maintained by this Part may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the original document.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 3120.APPENDIX A Insurance Producer Disclosure for Annuities

Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE PRODUCER INFORMATION (“Me”, “I”, “My”)

First Name: _____ Last Name: _____

Business\Agency Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

Insurance Producer Number in Illinois: _____

CUSTOMER INFORMATION (“You”, “Your”)

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to you in accordance with Illinois law. If I recommend that you buy an annuity, it means I believe that it effectively meets your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds, and mutual funds, also may meet your needs.

I offer the following products:

- ☐ Fixed or Fixed Index Annuities
- ☐ Variable Annuities
- ☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non- insurance financial products that I am licensed and authorized to provide advice about or to sell.

- ☐ Mutual Funds
- ☐ Stocks/Bonds
- ☐ Certificates of Deposit

Whose Annuities Can I Sell to You?

I am authorized to sell:

- ☐ Annuities from Only One Insurer
- ☐ Annuities from Two or More Insurers
- ☐ Annuities from Two or More Insurers although I primarily sell annuities from:
_____.

How I'm Paid for My Work:

It's important for you to understand how I'm paid for my work. Depending on the particular annuity you purchase, I may be paid a commission or a fee. Commissions are generally paid to me by the insurance company while fees are generally paid to me by the consumer. If you have questions about how I'm paid, please ask me.

Depending on the particular annuity you buy, I will or may be paid cash compensation as follows:

- ☐ Commission, which is usually paid by the insurance company or other sources. If other sources, describe:_____.
- ☐ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- ☐ Other (Describe):_____.

If you have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, you acknowledge that you have read and understand the information provided to you in this document.

Customer Signature

Date

1016
1017
1018
1019
1020
1021
1022
1023
1024

Insurance Producer Signature

Date

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 3120.APPENDIX B Consumer Refusal to Provide Information

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form? You're buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives, and situation, the insurance producer, broker, or company needs information about you, your financial situation, insurance needs, and financial objectives.

If you sign this form, it means you have not given the insurance producer, broker, or company some or all the information needed to decide if the annuity effectively meets your needs, objectives, and situation. You may lose protections under the Illinois Insurance Code if you sign this form or provide inaccurate information.

Statement of Purchaser:

- ☐ I REFUSE to provide this information at this time.
☐ I have chosen to provide LIMITED information at this time.

Customer Signature

Date

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 3120.APPENDIX C Consumer Decision to Purchase an Annuity Not Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are you being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives, and situation, the producer, broker or company has the responsibility to learn about you, your financial situation, insurance needs, and financial objectives.

If you sign this form, it means you know that you’re buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the producer, broker, or company did not recommend that I buy it. If I buy it without a recommendation, I understand I may lose protections under the Illinois Insurance Code.

Customer Signature

Date

Producer Signature

Date

(Source: Added at 46 Ill. Reg. _____, effective _____)